

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

July 29, 2005

IN RE:

**BELLSOUTH'S PETITION TO ESTABLISH
GENERIC DOCKET TO CONSIDER
AMENDMENTS TO INTERCONNECTION
AGREEMENTS RESULTING FROM CHANGES
OF LAW**

)
)
)
)
)
)
)

**DOCKET NO.
04-00381**

**ORDER GRANTING MOTION FOR LEAVE TO FILE REPLY BRIEF,
GRANTING PETITION TO INTERVENE, ACCEPTING WITHDRAWAL
AND ADOPTING JOINT ISSUES MATRIX**

This docket is before the Hearing Officer for consideration of the following:

(1) *BellSouth Telecommunications, Inc.'s Motion for Leave to File Reply to CompSouth's Response to Motion for Summary Judgment*, (2) *the Response of CompSouth to BellSouth's Motion to File Reply Brief*, (3) *the Petition to Intervene of ITC^DeltaCom*, (4) the request to remove Birch Telecom from the list of CompSouth members participating in this docket, and (5) the filings to correct the joint issues matrix. The parties convened for a status conference on July 21, 2005, during which the Hearing Officer ruled on the intervention and removal. The Hearing Officer noted CompSouth's objection, filed that day, to BellSouth's request to file a reply brief and took the matter under advisement.

MOTION FOR LEAVE TO FILE REPLY

During a telephonic status conference on May 26, 2005, the parties in this matter agreed to a procedural schedule.¹ In part, the schedule provided that motions for summary judgment would be filed by June 1, 2005, and responses to summary judgment motions would be filed by July 1, 2005. The schedule did not provide a schedule for replies. TRA Rule 1220-1-2-.06(3) specifies that no reply to a response on a preliminary motion shall be filed “except upon leave given or upon the order of the Authority or the Hearing Officer.”

In accordance with the schedule, on June 1, 2005 BellSouth filed *BellSouth Telecommunications, Inc.’s Motion for Summary Judgment, or in the Alternative, Motion for Declaratory Ruling* (“*Motion for Summary Judgment*”). On July 1, 2005, Sprint Communications Company L.P. and SprintCom, Inc. d/b/a Sprint PCS (“Sprint”) filed *Sprint’s Response to BellSouth Telecommunication, Inc.’s Motion for Summary Judgment, or in the Alternative, Motion for Declaratory Ruling*. Also on July 1, 2005, Competitive Carriers of the South, Inc. (“CompSouth”), the Southeastern Competitive Carriers’ Association (“SECCA”), and XO Communications Services, Inc. (“XO”) (together, “Joint CLECs”) filed the *Joint CLECs’ Response to BellSouth’s Motion for Summary Judgment or Declaratory Ruling*.

On July 14, 2005, BellSouth filed *BellSouth Telecommunications, Inc.’s Motion for Leave to File Reply to CompSouth’s Response to Motion for Summary Judgment* (“*Motion for Leave*”). On July 21, 2005, CompSouth filed a response in opposition to the motion.² XO filed a letter supporting CompSouth’s position in opposition to BellSouth’s motion on July 25, 2005. XO also proposed that the opposing parties should be granted an opportunity to respond to BellSouth’s reply brief if the Hearing Officer granted BellSouth’s *Motion for Leave*.

¹ See *Order Establishing Procedural Schedule* (June 1, 2005).

² *Response of CompSouth to BellSouth’s Motion to File Reply Brief* (July 21, 2005)

The procedural schedule in this docket allows no room for delay. Direct testimony has been filed, and the parties are preparing rebuttal testimony, which is due August 16, 2005, all in preparation for the hearing on September 12, 2005.

Despite this schedule, the Authority must consider the pending *Motion for Summary Judgment*. During the July 21, 2005 status conference, the parties agreed to present oral argument to the voting panel on Monday, August 8, 2005, immediately following the regularly scheduled Authority Conference. The parties agreed that argument should conclude within one hour, including questions from the bench. BellSouth and the CLECs (collectively) will each be allotted twenty minutes.

The Hearing Officer therefore grants BellSouth's *Motion for Leave* and accepts the proposed *Reply Brief of BellSouth Telecommunications, Inc. on Motion for Summary Judgment*, submitted as an exhibit to BellSouth's *Motion for Leave*, as filed in the record. Opposing parties may submit responses to BellSouth's reply brief; the responses must be filed no later than 2:00 p.m. (central) on Thursday, August 4, 2005 and are limited to any new matter raised or discussed by BellSouth in its reply. No additional reply or responsive briefs will be accepted unless requested by the panel, especially given the opportunity to address issues related to the summary judgment motion at oral argument.

PETITION TO INTERVENE

ITC^DeltaCom filed the *Petition to Intervene of ITC^DeltaCom* on July 1, 2005. ITC^DeltaCom has participated in this docket as a member of CompSouth from the initiation of the docket. ITC^DeltaCom states that it will continue to participate as a part of CompSouth but also may wish to enter a witness on its own behalf at the hearing. ITC^DeltaCom therefore requests designation as a separate party in the docket.

ITC^DeltaCom asserts that its legal rights, duties, privileges, immunities, and other legal interests may be affected or determined by the outcome of this proceeding. ITC^DeltaCom represents that its participation will not impair the interests of justice or the orderly and prompt conduct of the proceeding. ITC^DeltaCom affirms that granting the intervention will not in any way change the procedural schedule agreed upon by the parties and accepted by the Hearing Officer.

Tenn. Code Ann. § 4-5-310(a) (1998) sets forth the following criteria for granting petitions to intervene:

(a) The administrative judge or hearing officer shall grant one (1) or more petitions for intervention if:

(1) The petition is submitted in writing to the administrative judge or hearing officer, with copies mailed to all parties named in the notice of the hearing, at least seven (7) days before the hearing;

(2) The petition states facts demonstrating that the petitioner's legal rights, duties, privileges, immunities or other legal interest may be determined in the proceeding or that the petitioner qualifies as an intervenor under any provision of the law; and

(3) The administrative judge or hearing officer determines that the interests of justice and the orderly and prompt conduct of the proceedings shall not be impaired by allowing the intervention.

During the July 21, 2005 status conference, the Hearing Officer applied this legal standard and granted the *Petition to Intervene of ITC^DeltaCom* upon finding that it satisfied the requirements. It was timely and properly filed and served, and it demonstrated that ITC^DeltaCom's legal interests may be determined in this matter. The Hearing Officer found that allowing ITC^DeltaCom's intervention will not impair the interests of justice or the orderly and prompt conduct of this matter.

REMOVAL OF BIRCH TELECOM

During the July 21, 2005 status conference, the Hearing Office noted and accepted the removal of Birch Telecom from the list of CompSouth members participating in this docket.

REVISED JOINT ISSUES MATRIX

At the July 21, 2005 status conference, the Hearing Officer requested confirmation that all parties were in agreement with the modified joint issues matrix filed on July 21, 2005, which removed issues seven (7) and twenty-one (21) from the matrix. Counsel for XO indicated XO needed additional time to consider the removal of the issues. On July 22, 2005, Counsel for XO filed a letter on behalf of XO and SECCA confirming that XO and SECCA do not object to the removal of the issues under the current status of the law. The Hearing Officer therefore accepts the revised joint issues matrix, filed July 21, 2005, which omits issues seven (7) and twenty-one (21) from the matrix.

IT IS THEREFORE ORDERED THAT:

1. BellSouth is granted leave to file a reply to the Joint CLECs response, and the *Reply Brief of BellSouth Telecommunications, Inc. on Motion for Summary Judgment* attached as an exhibit to its *Motion for Leave* is hereby deemed filed in the record.
2. The parties opposing BellSouth are granted leave to file a response to the reply brief. Responses must be filed no later than 2:00 p.m. (central) on Thursday, August 4, 2005 and are limited to new matters raised or discussed in BellSouth's reply brief.
3. BellSouth and the CLECs will present oral argument on Monday, August 8, 2005, before the voting panel assigned to this docket immediately following the regularly scheduled Authority Conference.

4. The *Petition to Intervene of ITC^DeltaCom* is granted. ITC^DeltaCom may participate in this proceeding as its interests require and receive copies of any notices, orders or other documents filed herein.

4. Birch Telecom is removed from the list of CompSouth members participating in this docket.

5. The revised joint issues matrix submitted July 21, 2005 is adopted. Issues seven (7) and twenty-one (21) contained in the parties' "final" joint issues matrix filed June 29, 2005 are removed from the issues matrix.



Deborah Taylor Tate, Director
As Hearing Officer